

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIMBERLY, STATE OF IDAHO, ANNEXING CERTAIN REAL PROPERTY DESCRIBED BELOW, PROVIDING THE ZONING CLASSIFICATION THEREFOR, AND ORDERING THE NECESSARY ZONING DISTRICT / AREA OF IMPACT MAP AMENDMENTS.

WHEREAS, Kelly P. Munsee applied for annexation of 40 +/- acres of real property more particularly described in Exhibit "A" attached hereto and depicted on Exhibit "B" attached hereto ("Annexation Parcel");

WHEREAS, the Kimberly Planning and Zoning Commission having held its public hearing as required by law on the 2nd day of August, 2016 to consider the Zoning Designation and applicable Zoning District / Area of Impact Map amendments upon annexation of the Annexation Parcel;

WHEREAS, the Kimberly Planning and Zoning Commission has made recommendations known to the City Council; and

WHEREAS, the City Council for the City of Kimberly, Idaho, held a Public Hearing as required by law on the 27th day of September, 2016, to consider the Planning and Zoning Commission's recommended zoning designations and any applicable Zoning District / Area of Impact Map amendments upon annexation of the Annexation Parcel;

BE IT ORDAINED by the Mayor and City Council of the City of Kimberly, County of Twin Falls, State of Idaho, THAT THE FOLLOWING REAL PROPERTY DESCRIBED ON EXHIBIT "A" AND DEPICTED ON EXHIBIT "B" ATTACHED HERETO, INCLUDING ALL PUBLIC STREETS, HIGHWAYS, ALLEYS AND PUBLIC RIGHTS-OF-WAY ADJACENT AND WITHIN THIS DESCRIPTION ARE HEREBY ANNEXED INTO THE CITY OF KIMBERLY, IDAHO:

SECTION 1. The Annexation Parcel shall be zoned Commercial Gateway and R-3 Residential as depicted on Exhibit "C" under the provisions of Title 17 and the 2013 Kimberly Comprehensive Plan and Map.

SECTION 2. Kimberly Water and Sewer services are located at the Southwest corner of the Annexation Parcel near the intersection of Paintbrush Ave. and State Highway 30. Water and Sewer services are currently available, depending upon the speed of development of this Annexation Parcel, other developments in the City needing services, and the ability of the City to provide water and/or sewer capacity at the requested time. The City of Twin Falls processes Kimberly's waste water and has been provided notice of the annexation of the Annexation Parcel and applicable zoning designations for future development.

SECTION 3. From and after the effective date of this ordinance publication, shall be and is hereby subject to the provisions of all bylaws, ordinances, rules and regulations of the City of Kimberly, Idaho.

SECTION 4. The Zoning District / Impact Area Map for the City of Kimberly, Idaho, is hereby amended to reflect the newly incorporated Annexation Parcel and zoning designations.

REC'D OCT 21 2016

SECTION 5. The Clerk of the City of Kimberly, Idaho, shall, within ten (10) days following the effective date of this ordinance, shall cause one (1) copy of the legal description of the Annexation Parcel and City limit boundary map as altered by this annexation, prepared in a draftsman like manner, to be filed with the Twin Falls County Recorder, the Twin Falls County Assessor and the Idaho State Tax Commission.

SECTION 6. The City of Kimberly and Kelly P Munsee shall enter into an annexation agreement attached hereto as Exhibit "D" for the purpose of establishing certain rights and obligations of the parties with regard to the annexation of the Annexation Parcel.

SECTION 7. Kimberly has determined that annexing the Annexation Parcel constitutes an orderly extension of its municipal boundaries, and that such annexation is a Category A Annexation per Idaho Code Title 50 Section 50-222 (3) (a) and is described in the Kimberly 2013 Comprehensive Plan / Map as being in City's Impact Area for future growth.

SECTION 8. It has been determined that it is in the best interests of the City of Kimberly and Kelly P Munsee that the Annexation Parcel be annexed into the City of Kimberly and be developed in accordance with the annexation agreement attached hereto as Exhibit "D".

SECTION 9. If any section or portion of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

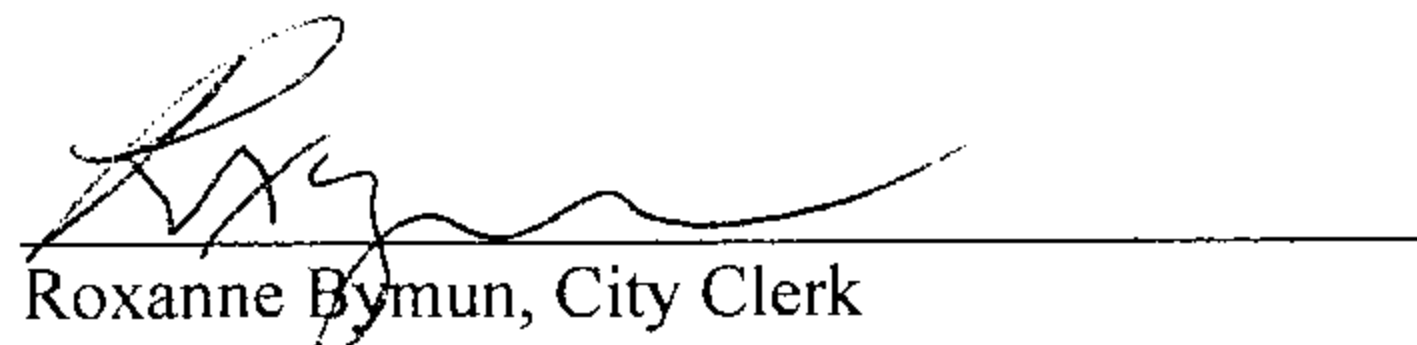
PASSED by the City Council of the City of Kimberly, County of Twin Falls, State of Idaho, this 29th day of September, 2016.

Signed by the Mayor, this 29th day of September, 2016.



Burke Davidson, Mayor

ATTEST:



Roxanne Bymun, City Clerk

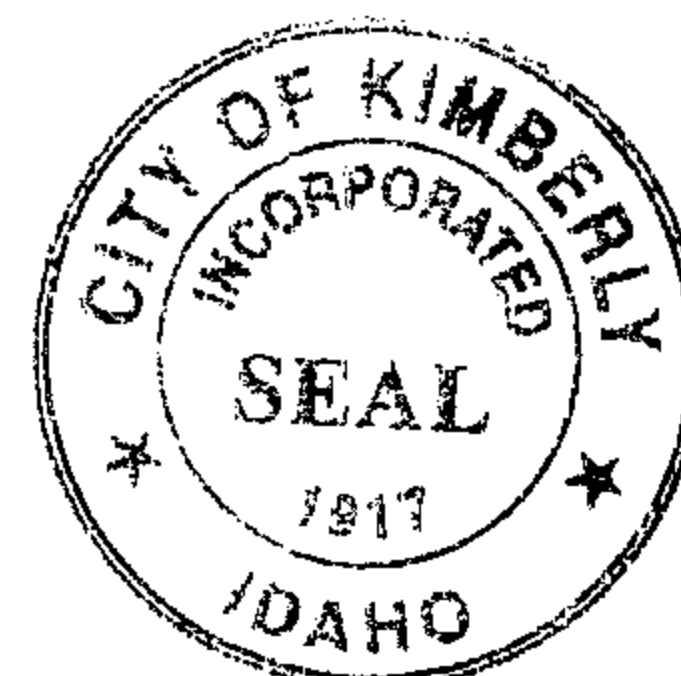


Exhibit "A"
Legal Description

**Annexation to the City of Kimberly
Twin Falls County, Idaho**

Being a portion of the NW ¼ NW ¼ of Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of said Section 21, said corner lies North 00°05'27" East 2639.30 feet from the West quarter corner of said Section 21;

Thence, South 00°05'30" West 1319.69 feet along the West boundary of said NW ¼ NW ¼ of Section 21;

Thence, leaving said West boundary, South 89°24'49" East 70.35 feet to a point on the East Right-of-Way line of U.S. Highway 30, Project No. F-2361 (25) and being the REAL POINT OF BEGINNING;

Thence, along an arc of a non-tangent 7689.44 foot radius curve to the left, through a central angle of 02°54'11", an arc distance of 389.62 feet and a chord distance of 389.58 feet that bears North 00°13'55" East along said East Right-of-Way line;

Thence, North 01°13'11" West 31.23 feet along said East Right-of-Way line;

Thence, South 88°46'49" West 10.00 feet along said East Right-of-Way line;

Thence, North 01°13'11" West 807.84 feet along said East Right-of-Way line to a point on the South Right-of-Way line of State Highway 50, Project No. S-2741 (8);

Thence, North 46°08'33" East 59.19 feet along said South Right-of-Way line;

Thence, South 89°11'48" East 1234.28 feet along said South Right-of-Way line to a point on the East boundary of said NW ¼ NW ¼ of Section 21;

Thence, South 00°04'30" West 25.00 feet along said South Right-of-Way line and East boundary;

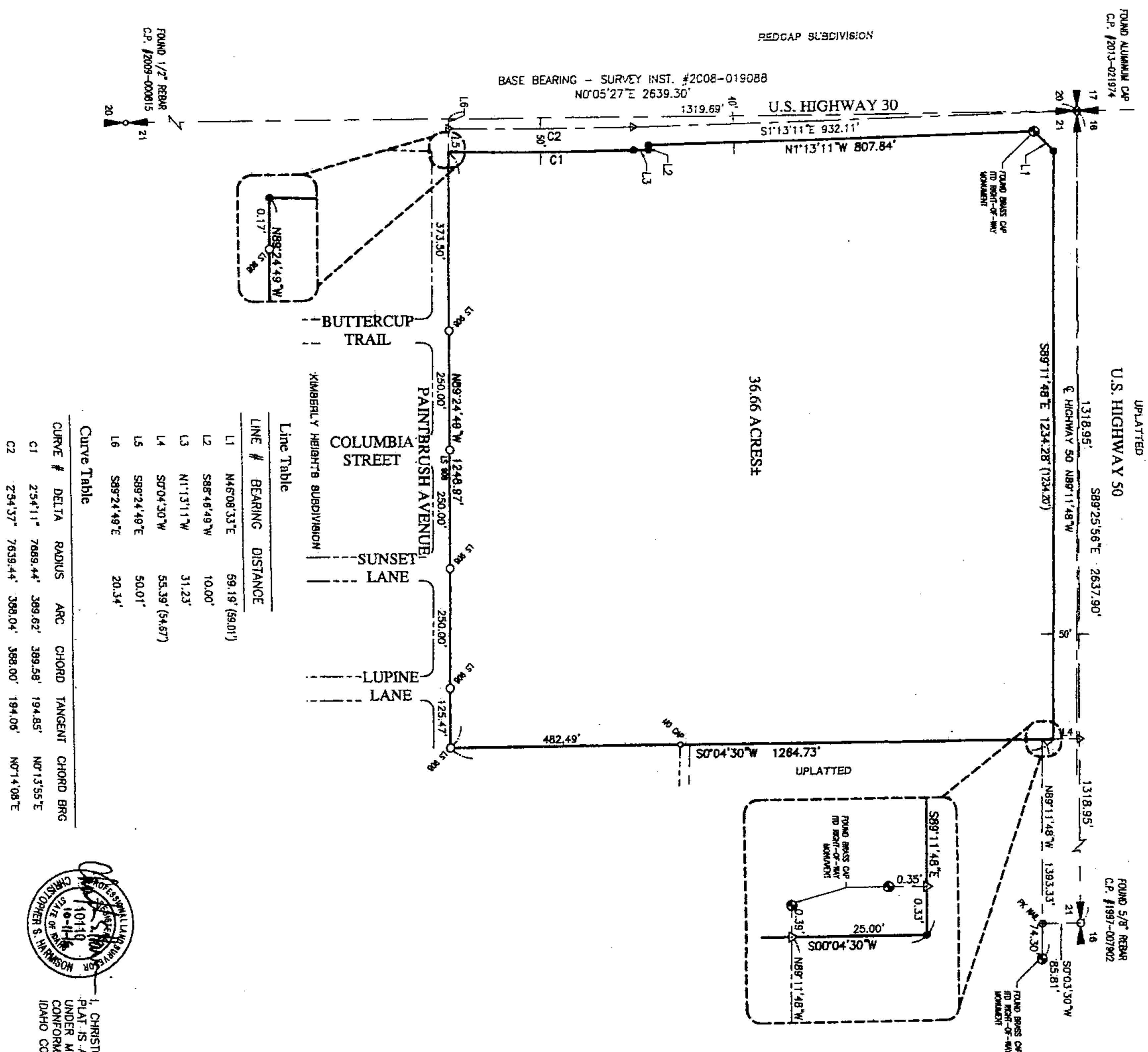
Thence, leaving said South Right-of-Way line, South 00°04'30" West 1239.73 along said East boundary to the Northeast corner of the certain Plat entitled "KIMBERLY HEIGHTS SUBDIVISION", recorded August 28, 2006, as instrument no. 2006-021616, of official records, in the office of the county recorder of Twin Falls County;

Thence, North 89°24'49" West 1248.97 feet along the North boundary of said Plat to said REAL POINT OF BEGINNING.

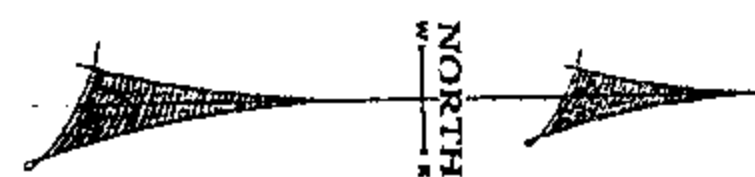
Together therewith all public streets, highways, alleys and public rights-of-way adjacent and within the above described parcel of land.

End of Description

Exhibit "B"



Located In
A Portion of
NW 4 NW 4, Section 21
Township 10 South, Range 18 East
Boise Meridian
Twin Falls County, Idaho
2016



0 100 200 400

SCALE IN FEET

Legend

- | SURVEY BOUNDARY LINE | SECTION LINE | QUARTER SECTION LINE | SIXTEENTH SECTION LINE | ADJACENT PROPERTY LINE | CENTERLINE OF STREET | CALCULATED POINT (NOT SET) | FOUND BRASS CAP | FOUND 5/8" REBAR (AS NOTED) | FOUND 1/2" REBAR (AS NOTED) | MONUMENT (AS NOTED) | SET 5/8" x 24" REBAR
- 1/2" CAP - LS 10110 | FOUND ALUMINUM CAP | RECORD DISTANCE |
|----------------------|--------------|----------------------|------------------------|------------------------|----------------------|----------------------------|-----------------|-----------------------------|-----------------------------|---------------------|---|--------------------|-----------------|
| _____ | _____ | _____ | _____ | _____ | _____ | △ | ● | ○ | ○ | ⊙ | ● | ◆ | (10.01) |

Survey References


#2013--016315
#2011--019014
#1997--020164
REDCAP SUBDIVISION
KIMBERLY HEIGHTS SUBDIVISION
TID PROJECTS F-2361 (25) &
S-2741 (8)

Deed References

TWIN FALLS COUNTY
Recorded for:
EHAM ENGINEERS
11:03:03 AM 10-11-2016
2016-017860
No. Pages: 1 Fee: \$ 5.00
KRISTINA GLASCOCK
County Clerk
Deputy: SMILEN

-1, CHRISTOPHER S. HARMISON, DO HEREBY CERTIFY THAT THIS
 MAP IS A TRUE AND ACCURATE MAP OF THE LAND SURVEYED
 UNDER MY SUPERVISION AND DIRECTION, AND IN
 CONFORMANCE WITH THE REQUIREMENTS OF THE STATE OF
 IDAHO CODE TITLE 55, CHAPTER 19.

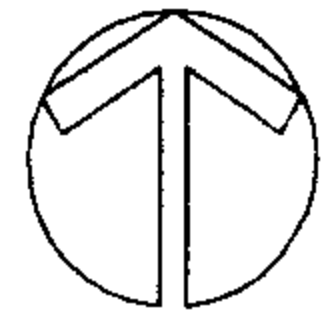
Record of Survey
for
MUNSEE PROPERTY



EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE

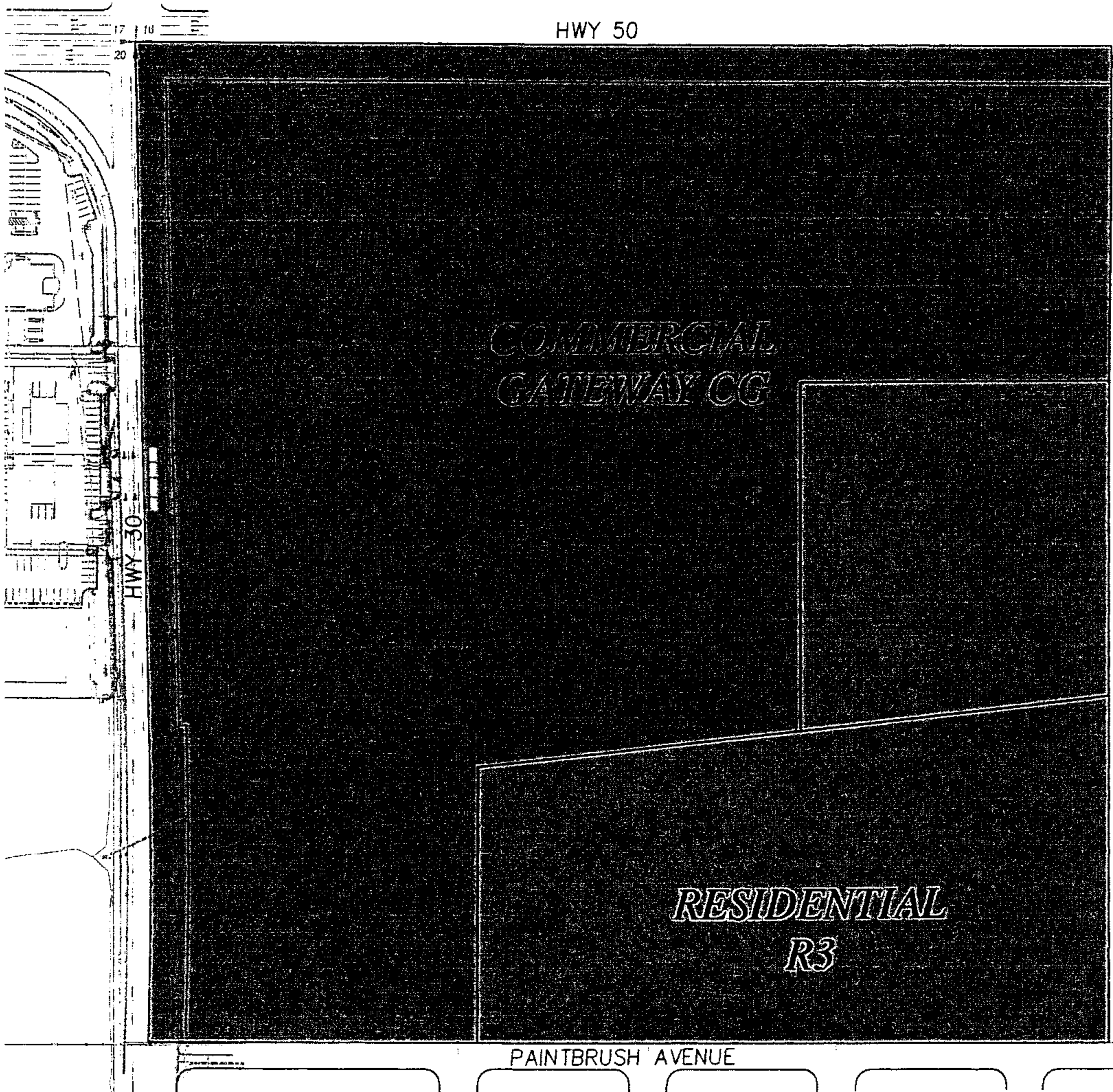
Engineers / Surveyors / Planners
621 North College Road, Suite 100 Twin Falls, Idaho 83301
p (208)-734-4888 fax (208)-734-6049 web: ehm-inc.com

Exhibit "C"



NORTH

HWY 50



0 100 200 400

SCALE IN FEET

JOB NO.: 281-16
APPROVED APPROVED
DESIGN XXX
DRAWN VAS
DATE JULY 2016
SCALE SHOWN
201-16 AMEX SITE EXHIBITS
Sheet No.: 1

CITY OF KIMBERLY ANNEXATION EXHIBIT
KIMBERLY, IDAHO



EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE

Engineers / Surveyors / Planners
621 North College Road, Suite 100 Twin Falls, Idaho 83301
p (208)-734-4888 fax (208)-734-6049 web: ehminc.com

EXHIBIT "D"

To Kimberly Ordinance No. 635

KELLY P MUNSEE ANNEXATION AGREEMENT

THIS MUNSEE ANNEXATION AGREEMENT, entered into this 27th day of September, 2016 by and between the CITY OF KIMBERLY, IDAHO (herein referred to as "City") and KELLY P. MUNSEE (herein referred to as "Owner").

RECITALS

This Agreement is predicated upon the following facts:

WHEREAS, City is an incorporated City having all of the powers and authority, including without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511) and to approve site design in a Commercial Gateway Zone (Idaho Code § 67-6501, Idaho Code § 67-6513 and Kimberly City Code Title 17 Zoning Regulations);

WHEREAS, Owner desires to have the real property more particularly described on Exhibit "A-1" and depicted on Exhibit "B-1" ("Annexation Parcel") annexed into the City. In furtherance thereof, on July 1, 2016 the Owner, submitted a Request for Annexation of the Annexation Parcel to City;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, and in reliance and consideration of the Recitals set forth above, which are an integral part of this Agreement and are fully incorporated herein by this reference, Owner and Kimberly hereby mutually covenant and agree as follows:

1. "Development Standards" The parties have agreed that the Annexed Parcel be developed in general accordance with the requested Commercial Gateway and R-3 Residential zones depicted on the conceptual plan map attached hereto as Exhibit C-1 ("Concept Project Plan") and ultimately to be submitted to the Kimberly Planning and Zoning Administrator for processing as a subdivision plat and building permit, compliant with the Commercial Gateway design guidelines. Final zoning boundaries may vary from the Concept Project Plan as the Annexation Parcel is subdivided and zones are aligned with the recorded plat boundaries;

2. "Utility Easement" Owner agrees to provide a minimum 25' wide utility easement adjacent to State Highway 30 and 50 as provided for on an approved subdivision plat. If on private property, the easement shall be restricted to City per said plat.

3. "Subdivision" Owner agrees to develop applicable adjacent frontage to Paintbrush Avenue, State Highway 30 and 50, as required in Title 17, Chapter 17.12, subdivision provisions.

4. "Fees" Nothing herein shall restrict the City's ability to charge application fees, building permit fees, water and sewer fees assessed at the time of the issuance of the building permit, as such fees are consistent with the City's fee schedule.

5. "Owner's Responsibility" The City sewer and water system shall be extended by Owner, at its sole expense, to and throughout the Annexation Parcel, with pipelines, pumping facilities, manholes, service stubs to each proposed building and platted lot and other necessary appurtenances. Sewer equivalencies shall be calculated per adopted ordinances and resolutions.

6. "Survival and Non-Merger Clause" The terms, conditions and obligations of this Agreement shall survive the execution, delivery and recording of each plat, re-plat, lot line shift, deed, or other document described in or required by this Agreement.

7. "Sale or Transfer of the Property" This Agreement shall run with the land comprising the Annexation Parcel. No person or entity acquiring the Property or any portion of the development rights related thereto shall be permitted to develop, construct, erect, or install any building, use or improvement which does not conform in all respects to this Agreement, created pursuant hereto. In the event that Owner or a successor in interest to Owner, sells or transfers the Annexation Parcel, or any portion of the development rights thereto, written notice of said transaction shall be given to Kimberly not less than thirty (30) days after closing. Nothing herein shall preclude the Owner from assigning all or part of its rights hereunder to one or more third party developers to plan, construct and sell the proposed development, or any parts thereof.

8. "Amendment of Agreement" This Agreement may be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing.

9. "Police Powers" Nothing contained herein is intended to limit the police powers of the City or its discretion in review, subsequent applications regarding annexation, development and construction of the Property or any portion thereof. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, including subsequent amendments and codifications thereof, unless expressly provided for herein.

10. "City Approvals" City shall consider all application(s) of Owner in accordance with this Agreement in an efficient and expeditious manner consistent herewith.

11. "Time Is of The Essence" Time and timely performance are of the essence of this Agreement.

12. "Relationship of Parties" It is understood the contractual relationship between the City and Owner is such that Owner is not the agent, partner or joint venture of the City.

13. "Attorney Fees and Costs" If legal action by either party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

14. "Notices" All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Kimberly
Attn: Planning and Zoning
P.O. Box Z
Kimberly, Idaho 83341

Kelly P. Munsee
2557 E 3708 N
Twin Falls, ID 83301

15. "No Presumptions" No presumption shall exist in favor or against any party to this Agreement as a result of the drafting and preparation of this Agreement. Owner acknowledges that it has been represented by independent legal counsel and has done so to the extent it deemed advisable. Owner further acknowledges that no official, employee or agent of City has made any promise, representation or warranty to it except that contained in this Agreement.

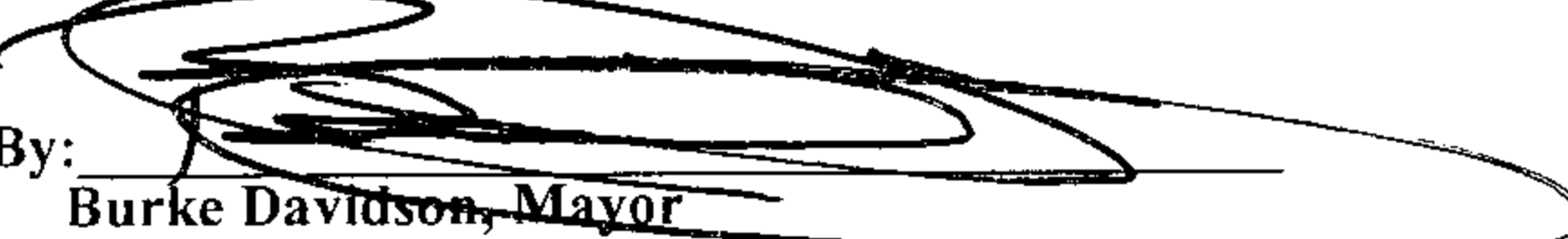
16. "Authority to Execute" Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement, as well as all the Land Use Applications and other applications, plats and documents required hereunder for and on behalf of the entity executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the State of Idaho, this 28th day of September, 2016.

Owner:

By: 
Kelly P. Munsee, Owner


City of Kimberly, Idaho:

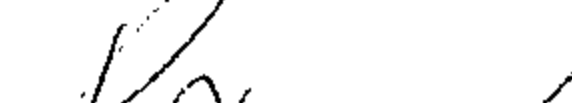
By: 
Burke Davidson, Mayor

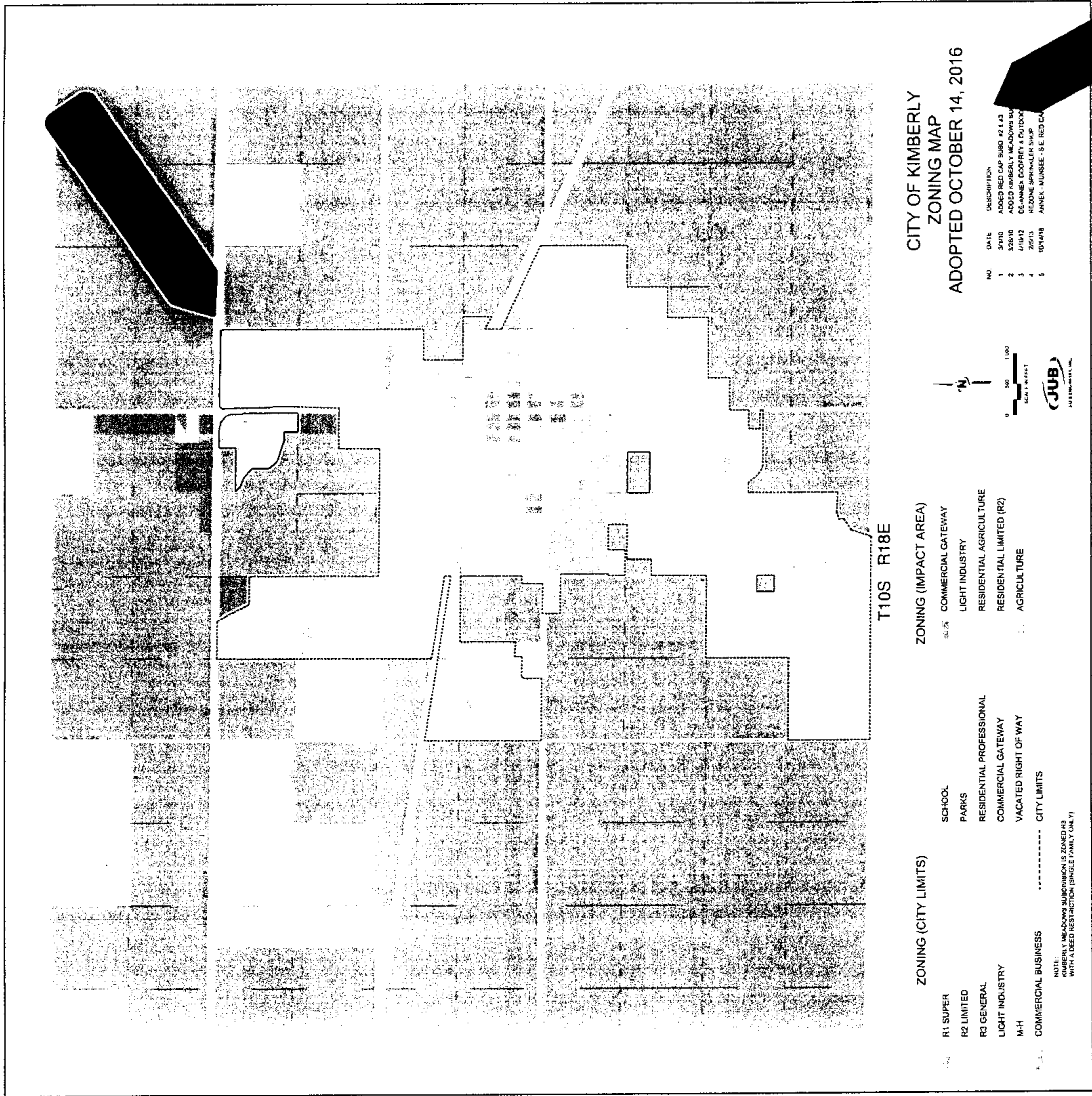
On this 28 day of September, 2016, before me, a Notary Public for said County and State, personally appeared Kelly P. Munsee, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

STATE OF IDAHO)
)
) ss.
County of Twin Falls)

On this 28 day of September, 2016, before me, a Notary Public for said County and State, personally appeared Burke Davidson, known or identified to me, to be the Mayor of the City of Kimberly, Idaho that executed the said instrument, and acknowledged to me that the City of Kimberly, Idaho executed the same.




NOTARY PUBLIC FOR IDAHO
Residing at Twain Falls, ID 83301
My commission expires March 23, 2022



*After annexation Munsee
Dns # 635*